

Supreme Court, U.S.
FILED

05-958 JAN 30 2006

No. OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

CHIM S. SHEIKH, PETITIONERS

v.

7-ELEVEN

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Where 7-Eleven "reorganized" its Chesapeake Division of 7,500 employees so that only one position, the petitioner's job as a Market Manager, was eliminated, has the petitioner of South Asian descent made out a *prima facie* case of discriminatory reorganization in violation of 42 U.S.C. Section 1981, under the *McDonnell Douglas* framework of proof?
2. Where the petitioner's job as Market Manager was eliminated and he was demoted within weeks of his protected activity of advocating on behalf of non-white employees, has he made out a viable claim of retaliatory discrimination under 42 U.S.C. Section 1981?
3. Where the petitioner suffered a 3-grade demotion, a 50% cut in salary and a reduction in responsibility from 70 to just 7 stores, all in immediate retaliation for his protected activities, has petitioner made out a triable claim for constructive discharge?

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OPINIONS BELOW

The unpublished *per curiam* opinion of the United States Court of Appeals for the Fourth Circuit in *Chim S. Sheikh v. 7-Eleven, Incorporated* (C.A. No. 05-1075), decided September 13, 2005, affirming the District Court's order granting the Respondent 7-Eleven's motion for summary judgment and denying the petitioner Chim S. Sheikh's cross motion for summary judgment, is set forth in the Appendix hereto (App. 1-2).

The unpublished Memorandum Opinion of the United States District Court for the District of Maryland, Southern Division, in *Chim S. Sheikh v. 7-Eleven, Incorporated* (Civil Action No. AW-03-2270), decided December 17, 2004, granting the Respondent 7-Eleven, Inc.'s motion for summary judgment and denying the petitioner Chim S. Sheikh's cross motion for summary judgment, is set forth in the Appendix hereto (App. 3-24).

The unpublished order of the United States Court of Appeals for the Fourth Circuit in *Chim S. Sheikh v. 7-Eleven, Incorporated* (C.A. No. 05-1075), filed November 1, 2005, denying the petitioner Chim S. Sheikh's timely filed petition for rehearing and rehearing *en banc*, is set forth in the Appendix hereto (App. 25).

JURISDICTION

The decision of the United States Court of Appeals for the Fourth Circuit affirming the District Court's order granting the Respondent 7-Eleven's motion for summary judgment and denying the petitioner Chim S. Sheikh's cross motion for summary judgment, was entered on September 13, 2005; and its order denying the petitioner's

timely filed petition for rehearing was filed on November 1, 2005 (Appendix 1:46).

This petition for writ of certiorari is filed within ninety (90) days of the date of the court of appeals' denial of the petitioner's timely filed petition for rehearing. 28 U.S.C. Section 2101(c). Revised Supreme Court Rule 13.3.

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. Section 1254(1).

RELEVANT PROVISIONS INVOLVED

United States Constitution, Amendment XIV, Section 1:

...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. Section 1981(a) and (c):

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of

every kind, and to no other.

....

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

STATEMENT

The parties' summary judgment materials and the complaint of the petitioner Chim S. Skeikh ("the petitioner") establish that he is 55-year-old male of South Asian descent. In 1972, he obtained the equivalent of a Masters degree in biochemistry from the University of London, Uganda. Over the next 25 years, he consistently took courses in business management, marketing and economics in an effort to enhance his career as a retail business manager. For over nine years in the late 1970's and 1980's, the petitioner worked as a District Manager and Merchandise Manager in convenience stores and retail stores in West Texas, having budgetary responsibility for several million dollars.

In 1985, the respondent 7-Eleven, Inc. ("7-Eleven") hired the petitioner as a Manager Trainee in Fort Worth, Texas. He was placed in a store in a difficult area with a history of depressed sales. The petitioner's performance was stellar and he became a role model for other managers. By late 1986, the petitioner was promoted to the position of Supervisor and he held this position for two years. In 1988, the petitioner moved to the Washington, D.C. area and worked for 7-Eleven as a Supervisor in Montgomery County, Maryland. Within weeks, he opened a new store for 7-Eleven and soon

became an Assistant Market Manager because of his outstanding work.

7-Eleven's operational model groups their stores into so-called Divisions. The Washington, D.C. area is denominated as the Chesapeake Division. It contains about 800 stores and encompasses Maryland, the District of Columbia, Virginia and West Virginia. Each Division is headed by a Division Manager who has underneath him/her various Market Managers who are responsible for 65-70 stores. Their contact with the individual 7-Eleven stores is limited; they rely upon Senior Field Consultants and Field Consultants for feedback on the stores. The Senior Field Consultant is the primary liaison between the Market Managers and the individual stores; the Field Consultants are responsible for about 7-9 stores and report to the Senior Field Consultant. Below the Field Consultants are the Store Managers who run the stores with Sales Associates and Clerks.

Within a year of becoming an Assistant Market Manager, the petitioner was promoted by 7-Eleven to the position of one of the Division's three Sales and Promotion Managers, responsible for the merchandising and sales plan for all the corporate Maryland stores. Of these three Sales and Promotion Managers, the petitioner was the only non-Caucasian/American.

In 1992, 7-Eleven instituted a "reorganization" of its Chesapeake Division resulting in the elimination of his managerial position. Even though he was about the best performer of the three Division Sales and Promotion Managers, had more markets than the two other Managers and his ratings were at least equal to their ratings, he was demoted to the position of Senior Buyer in

7-Eleven's Merchandising Department. His market was then divided up between the two remaining Caucasian/American Division Sales and Promotion Managers.

As one of four Senior Buyers in 7-Eleven's Merchandising Department, the petitioner was the only non-Caucasian/American. Three months later in 1992, the petitioner was told that he was being demoted once again due to another company "reorganization," this time to the position of Senior Field Consultant. This demotion reduced the petitioner's pay grade level and made him subordinate to his former co-workers, the other three Buyers.

Later the same year, the petitioner applied for the position of Market Manager which had become available. Despite his Supervisor's enthusiastic endorsement and his qualifications for the position, the petitioner was rejected in favor of someone who was not of his race and ethnicity. The same year another vacancy became available for the same position within the Chesapeake Division and his application was once again rejected in favor of another who was not of his race and ethnicity.

In 1995, petitioner applied for another vacant Market Manager position in the Chesapeake Division. While well qualified, relied upon by all of his co-workers to instruct them on how to run every aspect of the business and possessing an outstanding endorsement from his Supervisor for promotion, the petitioner's application was once again rejected in favor of another who was not of his race and ethnicity. This same scenario of the petitioner being rejected for Market Manager was repeated twice in 1997, once more in 1998 and then again

in 1999.

One of the petitioner's successful competitors for Market Manager in 1997 was one Joseph Strong, a Caucasian American("Strong"). He became Division Manager for the Chesapeake Division sometime after 1998 and he makes the decision on who becomes a Market Manager. By 2000, the petitioner, even though immensely qualified and possessing superior recommendations from all of his Supervisors, had been denied the position of Market Manager *seven times* in favor of others who were not of his race or ethnicity.

When an opening for a Market Manager position again became available in 2000, the petitioner, still a Senior Field Consultant, went to Strong and told him of his frustration with being repeatedly discriminated against because of his race or ethnicity. He also told Strong that with each rejection, his complaints of different treatment were either ignored or he was told that 7-Eleven's upper management had directed the result. He promised Strong that if he were rejected once again, he would take legal action against 7-Eleven. Strong did not respond but after four months of having this vacant position of Market Manager unfilled, he finally told the petitioner that he (Strong) had been directed to give him this position.

Because of his promotion to Market Manager in January of 2001, the petitioner's pay grade increased from 23 to 24. Yet at the same time, 7-Eleven hired a Caucasian Male as a Market Manager *Trainee* with a pay grade of 25. After complaining about this, the petitioner was told by Strong that he would be considered for a pay grade of 25 after one year based upon his performance.